
TITLE 326 AIR POLLUTION CONTROL BOARD

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**
LSA Document #11-586

DEVELOPMENT OF NEW RULES CONCERNING SEWAGE SLUDGE INCINERATION**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule concerning sewage sludge incineration. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 11-10](#).

AUTHORITY: [IC 13-14-18](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forgo this comment period and proceed directly to the second notice of public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under ([IC 13-14-9-3](#))... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

This rule incorporates federal air emission requirements for sewage sludge incineration (SSI) units located at wastewater treatment facilities designed to treat domestic sewage sludge. On March 21, 2011, the United States Environmental Protection Agency (U.S. EPA) published a final rule establishing new source performance standards (NSPS) for new sources and emission guidelines for existing sources (76 FR 15372). New units are those for which construction was commenced after October 14, 2010, or modification was commenced after September 21, 2011. Existing sources are those for which construction commenced on or before October 14, 2010. Section 129 of the Clean Air Act (CAA) requires U.S. EPA to use maximum achievable control technology (MACT) in developing these standards.

Federal law requires states to adopt requirements at least as stringent as the federal emission guidelines for SSI units. IDEM has initiated this rulemaking to establish emission standards consistent with those of U.S. EPA's final rule for existing units. This rule will provide the legal mechanism to implement the emission guidelines and will be part of the state plan that IDEM will submit to U.S. EPA for approval, as required by Sections 111(d) and 129 of the CAA. The federal emission guidelines for existing sources are not directly enforceable and must be implemented by the state through a state plan (state rule or other enforceable mechanism). All NSPSs under 40 CFR 60 are incorporated by reference in [326 IAC 12](#) and the SSI NSPS will be incorporated into the state rules in a separate rulemaking through the annual update to the Code of Federal Regulation (CFR) definition for July 1, 2011. The annual CFR update rulemaking brings into state rules any NSPS promulgated by U.S. EPA in the previous year.

The federal rule applies to SSI units located at wastewater treatment facilities designed to treat domestic sewage sludge. SSI units may be operated by municipalities or other entities. Sewage sludge that is not burned at wastewater treatment facilities designed to treat domestic sewage sludge is subject to other CAA Section 129 standards or the Hazardous Waste Combustor rule at 40 CFR 63, Subpart EEE.

The federal rule establishes emission limits for cadmium (Cd), carbon monoxide (CO), dioxins and dibenzofurans (dioxins/furans), hydrogen chloride (HCl), lead (Pb), mercury (Hg), nitrogen oxides (NO_x), particulate matter (PM), and sulfur dioxide (SO₂). Instead of an opacity limit, the rule includes a requirement for a visible emissions test of the ash handling operations during each compliance test using Method 22 of 40 CFR 60.

The rule establishes emission limits for multiple hearth units and fluidized bed units. The rule also establishes requirements for operator training, and testing and monitoring requirements. Initial and annual stack tests are required along with annual inspections for air pollution control devices. Units not operating pursuant to a Title V permit will be required to submit an application for a Title V permit within one year from the effective date of this rule, or March 21, 2014, whichever is earlier.

Incinerators that continue to operate may need to install add-on air pollution control devices to meet the emission limits. Although the rule does not require the use of a specific type of control device, the MACT emission limits were determined based on the performance of wet electrostatic precipitator systems to meet the PM, Cd, and Pb limits and packed-bed scrubbers for control of HCl or SO₂. IDEM is aware of one source affected by this rule: the Indianapolis Sewage Sludge Incinerator at the Belmont Advanced Wastewater Treatment Plant. This plant consists of four multiple hearth units built in 1970 and four multiple hearth units built in 1954 (not currently in operation). This source is currently subject to 40 CFR 60, Subpart C (National Emission Standard for Hazardous Air Pollutants (NESHAP) for Beryllium), 40 CFR 60, Subpart E (NESHAP for Mercury), 40 CFR 503, Subpart E (Standards for the Use or Disposal of Sewage Sludge – Incineration), and state implementation plan (SIP) limits at [326 IAC 6.5-6-35](#) (PM) and [326 IAC 7-4-2](#) (SO₂).

The draft rule language incorporates by reference the federal model rule language from 40 CFR 60, Subpart MMMM, excluding the sections that have to do with the state implementing a state plan. IDEM is seeking comment on the draft language. The CAA requires that affected sources achieve compliance as expeditiously as practicable after U.S. EPA approval of the state rule, but not later than the earlier of the following dates: three years after the effective date of state plan approval by U.S. EPA or March 21, 2016, whichever occurs first. For compliance dates that extend more than one year following the effective date of state plan approval, state plans must include dates for enforceable increments of progress. IDEM is proposing a final compliance date of September 21, 2015, based on the expected effective date of this rulemaking and the three year compliance time frame.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

There are no costs imposed by this rule beyond those already imposed by federal law. U.S. EPA estimated that there are 204 affected units nationwide (76 FR 15372). U.S. EPA estimated compliance costs for all existing units to add the necessary controls, monitoring equipment, inspections, record keeping, and reporting requirements at an overall capital cost of \$55 million. There is one affected source in Indianapolis. At this time, IDEM does not know the compliance cost for this source and is requesting information on the fiscal impact of these federal requirements.

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

<http://www.in.gov/idem/4108.htm>

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Beumer
IDEM Small Business Regulatory Coordinator
MC 60-04 IGCS W041
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 234-3997
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's

duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1307
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386 or (800) 988-7901
bbaughn@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on sewage sludge incineration. These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) The federal rule requires that IDEM develop rules to incorporate the emission guidelines contained in 40 CFR 60, Subpart MMMM. IDEM has some discretion on how to implement the emission guidelines, that is, providing a compliance date. IDEM believes this notice and subsequent hearings provide sufficient opportunity for public input on this rulemaking.
- (2) The rulemaking is an incorporation of federal guidelines that have already gone through a rigorous public comment process.
- (3) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (4) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #11-586 (APCB) Sewage Sludge Incineration
Susan Bem Mail Code 61-50
Rule and SIP Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251
- (2) By facsimile to (317) 233-5967. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.
- (3) By electronic mail to sbem@idem.in.gov. To confirm timely delivery of comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments WILL NOT be considered part of the official written comment period unless they are sent to the electronic mail address indicated in this notice.**
- (4) Hand delivered to the receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

Regardless of the delivery method used, comments must be postmarked, faxed, time stamped, or hand delivered no later than 4:45 p.m. on November 18, 2011.

Additional information regarding this action may be obtained from Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 11-10](#) IS ADDED TO READ AS FOLLOWS:

Rule 10. Sewage Sludge Incineration Units

[326 IAC 11-10-1](#) Applicability

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 1. (a) Except as provided in subsections (b) through (d), this rule applies to each sewage sludge incineration unit as defined in 40 CFR 60.5250 for which construction was commenced on or before October 14, 2010.

(b) Combustion units that:

- (1) incinerate sewage sludge; and
 - (2) are not located at a wastewater treatment facility designed to treat domestic sewage sludge;
- are exempt from this rule. The owner or operator of the combustion unit must notify U.S. EPA and the department of an exemption claim under this subsection.

(c) If the owner or operator of a sewage sludge incineration unit makes changes that meet the definition of modification incorporated in section 2(a)(9) of this rule after September 21, 2011:

- (1) the sewage sludge incineration unit becomes subject to 40 CFR 60, Subpart LLLL* and [326 IAC 12](#); and
- (2) this rule no longer applies to that sewage sludge incineration unit.

(d) Physical or operational changes made to a sewage sludge incineration unit for which construction commenced on or before September 21, 2011, primarily to comply with this rule:

- (1) are not considered modifications or reconstructions; and
- (2) do not result in a sewage sludge incineration unit becoming subject to 40 CFR 60, Subpart LLLL*.

*Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 11-10-1](#))

[326 IAC 11-10-2](#) Requirements; incorporation by reference of federal standards

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 2. (a) The air pollution control board incorporates by reference the following sections of 40 CFR 60, Subpart MMMM, Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units:

- (1) 40 CFR 60.5085 through 40 CFR 60.5125, Increments of Progress*.
- (2) 40 CFR 60.5130 through 40 CFR 60.5160, Operator Training and Qualification*.
- (3) 40 CFR 60.5165 through 40 CFR 60.5181, Emission Limits, Emission Standards, and Operating Limits and Requirements*.
- (4) 40 CFR 60.5185 through 40 CFR 60.5200, Initial Compliance Requirements*.
- (5) 40 CFR 60.5205 through 40 CFR 60.5215, Continuous Compliance Requirements*.
- (6) 40 CFR 60.5220 through 40 CFR 60.5225, Performance Testing, Monitoring, and Calibration Requirements*.
- (7) 40 CFR 60.5230 through 40 CFR 60.5235, Recordkeeping and Reporting*.
- (8) 40 CFR 60.5240 through 40 CFR 60.5245, Title V Operating Permits*.

(9) 40 CFR 60.5250 Definitions*.

(10) 40 CFR 60, Subpart M, Tables 1 through 6*.

(b) For purposes of this rule, the terms used in 40 CFR 60.5085 through 40 CFR 60.5250* are defined as follows:

(1) "Administrator" means the commissioner of the department of environmental management.

(2) "You" means the owner or operator of an affected sewage sludge incineration unit.

(c) An owner or operator subject to section 1 of this rule must comply with this rule not later than one (1) year from the effective date of this rule unless the owner or operator complies with the increments of progress in 40 CFR 60.5085*.

(d) The compliance dates for the increments of progress in 40 CFR 60, Subpart M, Table 1* are as follows:

(1) The compliance date for Increment 1—Submit Final Control Plan shall be one (1) year from the effective date of this rule.

(2) The compliance date for Increment 2—Final Compliance shall be September 21, 2015.

***Copies of the Code of Federal Regulations (CFR) referenced in this rule may be obtained from the Government Printing Office, Washington, D.C. 20402 and are available for copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana 46204.**

(Air Pollution Control Board; [326 IAC 11-10-2](#))

[Notice of Public Hearing](#)

Posted: 10/19/2011 by Legislative Services Agency

An [html](#) version of this document.